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Supreme Court, U.S.
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No. 00-9769

IN THE SUPREME COURT OF THE UNITES STATES

October Term, 2000

DESARIE OVERTON,

Petitioner,

vs.

THE STATE OF OHIO,

Respondent.

On Petition For A Writ of Certiorari
To The Supreme Court of Ohio

BRIEF IN OPPOSITION

JULIA R. BATES, PROSECUTING ATTORNEY
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ON BEHALF OF RESPONDENT

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Respondent, the State of Ohio, respectfully submits this Brief in Opposition to the Petition for Certiorari of Petitioner, Desarie Overton. Respondent files this Brief under Rules 15.3 and 33.2 of this Court.

STATEMENT OF THE CASE

Respondent adopts the facts and procedural history as set forth in the opinion of the court of appeals. *State v. Overton*, Sixth District of Ohio court of appeals, Slip. Op. L-99-1317 (Sept. 1, 2000) (App. 1-8).

REASONS FOR DENYING THE WRIT

Although petitioner presents this case as one of paramount constitutional significance, Ohio's Sixth District Court of Appeals, truth be told, did nothing more than make a straightforward finding that an arrest warrant was supported by probable cause to believe that an offense occurred. The Ohio Supreme Court implicitly agreed, summarily finding that the matter did not raise any "substantial constitutional question." *State v. Overton*, 91 Ohio St.3d 1415, 741 N.E.2d 142 (2001).

The court of appeals did nothing more than apply well-established law to an otherwise-ordinary case. As even petitioner herself points out, the governing rule of law was set forth decades ago by this Court. But because she disagrees with the appellate court's application of this well-settled rule of law in this particular case, she now seeks this Court's involvement. And knowing that this Court will issue a certiorari writ only in cases of broad societal importance, petitioner has peppered her petition with frequent references to the Fourth Amendment, search warrants, and probable cause, all in an

alarmist effort to convince this Court that the appellate court's "holding" marks a dangerous break with precedent that must be corrected by this tribunal.

When the tumult subsides, however, it will become clear that the appellate court issued no "ruling" at all. Instead, it merely made a routine finding that an arrest warrant was supported by probable cause. No startling rule of law was announced, no eye-popping doctrine was enunciated, and no astonishing declaration was set forth. Accordingly, the court of appeals's opinion, as the Ohio Supreme Court summarily found, is not the slightest bit remarkable and need not be revisited -- must less, disturbed -- by this Court.

I.

THE QUESTION PETITIONER PRESENTS WAS REVIEWED -- AND RESOLVED -- BY THIS COURT OVER FORTY YEARS AGO.

Petitioner claims that several wrongs were thrust upon her. First, she complains that the police "forcibly entered" her apartment "without her permission." Pet. At 5. Next, she resents the fact that the complaint on which the arrest warrant was based was sworn before a deputy clerk rather than a judge.[1] Pet. at 6. She then laments that the complaint is "a form within a form." Pet. at 6. Finally, she alleges that the complaint, rather than being premised on allegations of the officer's personal knowledge of the facts surrounding the underlying offense, is instead based on the officer's mere conclusion that she had committed a crime. Pet. at 9. Accordingly, under petitioner's theory, there was no probable cause to issue the arrest warrant.

[1]Municipal-court clerks, however, qualify as neutral and detached magistrates and, accordingly, may issue arrest warrants. *Chadwick v. Tampa*, 407 U.S. 345 (1972).

At the end of the day, however, it is only this last allegation that has any bearing on this case. Petitioner herself so states: "The substantive issue in this case is whether a police officer's word that a person has committed a crime is sufficient to support the issuance of an arrest warrant." Pet. at 9.

Petitioner contends that an officer's mere word that a person has committed a crime does not support the issuance of an arrest warrant. As petitioner also acknowledges, however, "this Court resolved this precise issue more than forty years ago." Pet. at 8, citing *Giordenello v. United States*, 357 U.S. 480 (1958). In *Giordenello*, this Court ruled that a magistrate, when reviewing an affidavit for probable cause, "should not accept without question the officer's mere conclusion that the person whose arrest is sought has committed a crime." *Id.* at 485. Accordingly, there is no controversy for this tribunal to resolve.

II.

THE APPELLATE COURT ISSUED NO STARTLING RULE OF LAW COMPELLING THIS COURT'S REVIEW.

Petitioner concedes that the governing rule of law was decided long ago in *Giordenello*. But she disagrees with the court of appeals's application of this rule. She also disagrees with the Ohio Supreme Court's decision not to review her case and, in her effort to discredit that august institution, points out that one of its recent cases was summarily reversed by this tribunal. *Ohio v. Reiner*, 532 U.S. ----, 121 S.Ct. 1252, 149 L.Ed.2d 158 (2001).

The Ohio Supreme Court's holding in *Reiner*, flawed as it is, does not compel this Court to review this case. In *Reiner*, the Ohio Supreme Court, for perhaps the first

time in the history of jurisprudence, expressly ruled that the Fifth Amendment privilege against self-incrimination does not apply to witnesses who maintain their innocence: "There is no need for a grant of immunity where the witness denies all culpability." *State v. Reiner*, 89 Ohio St.3d 342, 354, 731 N.E.2d 662, 674 (2000). This Court summarily reversed this unprecedented holding:

> We have held that the privilege's protection extends only to witnesses who have 'reasonable cause to apprehend danger from a direct answer.' ... But we have never held, as the Supreme Court of Ohio did, that the privilege is unavailable to those who claim innocence. To the contrary, we have emphasized that on of the Fifth Amendment's 'basic functions. . . is to protect innocent men . . . "who otherwise might be ensnared by ambiguous circumstances."'

Ohio v. Reiner, U.S. at -----, 121 S.Ct. at 1254, 149 L.Ed.2d at 162 (citations omitted) (ellipses added in part).

Here, in contrast, the court of appeals issued no such startling rule of law. Rather, it merely applied well-settled Fourth Amendment law and made an everyday probable-cause determination. Such routine determinations are "decided on a case-by-case basis." *United States v. Nevitt*, 409 F.Supp. 1075, 1080 (W.D. Mich. 1976). See, also, *Illinois v. Gates*, 462 U.S. 213, 262 (1983), describing probable cause as a "fluid concept -- turning on the assessment of probabilities in particular factual contexts." And the Ohio Supreme Court, although also a target of petitioner's ill words, merely passed on the opportunity to review petitioner's case. This case, therefore, is hardly remarkable and, accordingly, need not be reviewed by this Court.

III.

PETITIONER'S EXCLUSIVE REMEDY IS AN ACTION UNDER 42 U.S.C. SEC. 1983.

In an effort to demonstrate that her allegations represent rampant abuses committed by the Toledo Police Department, petitioner claims that the alleged defects in her warrant are "the norm in the City of Toledo" because "arrest warrants are issued at the Toledo Municipal Court not on a finding of probable cause but simply on the request of police officers." Pet. at 10. Petitioner concludes by speculating that "[t]he practice must be virtually routine." *Id.*

There is no evidence in the record, however, to support these sweeping allegations. To the contrary, one would think that if Toledo police officers were able to obtain arrest warrants for the mere asking, as petitioner apparently suggests, the constitutional questions that petitioner now presents would have been presented -- and resolved -- years ago. Lacking evidence to substantiate this claim of widespread abuse, petitioner's only remaining course of action is to file a claim under 42 U.S.C. Sec. 1983,[2] pursue discovery, and prove her claims in either a state or federal trial court.

---

[2]42 U.S.C. Sec. 1983 provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory relief was unavailable.

IV.

THE WARRANT IS SUPPORTED BY PROBABLE CAUSE.

In any event, this case involves more than a police officer's mere word that petitioner committed a crime. As petitioner points out, the Fourth Amendment to the United States Constitution provides that no warrant shall issue but upon probable cause. See, generally, *Payton v. New York*, 445 U.S. 573 (1980).

As the appellate court found, Detective Andre Woodson swore out an affidavit to the Clerk of Court in which he specifically stated the criminal activity in question, listed the date of the offense, identified the contraband at issue, identified the applicable Ohio Revised Code section, set forth the exact address where the violation occurred, properly listed the venue by stressing that the offense occurred in Toledo, Lucas County, Ohio, and, of course, named petitioner not only as the defendant but also specifically identified her as an owner, lessee, or occupant of the property. Finally, the complaint was certified by a Toledo Municipal Court clerk, and an arrest warrant, in turn, was issued.

Accordingly, the complaint complied with Fed. R. Crim. P. 3 and 4.[3] First, Rule 3 requires the complaint to state "the essential facts constituting the offense charged." Second, Rule 4(A), in relevant part, requires the complaint to present probable cause to believe that an offense has been committed:

> If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. Upon the request of the attorney for the government a summons instead of a warrant shall issue.

[3]Rules 3 and 4 "must be read in light of . . . the Fourth Amendment." *Giordenello*, 357 U.S. at 485.

A defendant has "a heavy burden" when challenging a search-warrant affidavit. *United States v. Bennett*, 905 F.2d 931, 934 (6th Cir. 1990). Warrants are "issued on the basis of nontechnical, common-sense judgments of laymen applying a standard less demanding than those used in more formal legal proceedings." *Illinois v. Gates*, 462 U.S. 213, 235-236. Accordingly, a strong presumption of validity arises from their issuance, see, *e.g., United States v. Williams*, 385 F.Supp. 1400, 1403 (E.D. Mich. 1974), and a magistrate's probable-cause determination "should be paid great deference by reviewing courts," *Gates* at 236 (citation omitted). A stricter appellate review standard would subvert the Fourth Amendment's "strong preference for searches conducted pursuant to a warrant." *Gates* at 236. Warrants, therefore, are to be reviewed in a "commonsense" manner, not a "hypertechnical" one. *Id.* (citation omitted).

Petitioner claims that the complaint is insufficient because it is based on a mere recital of Ohio Rev. Code Section 2925.13(B)'s elements. She relies largely on *United States v. Giordenello*, 367 U.S. 480, in support of this claim. The *Giordenello* complaint was ruled invalid because it, indeed, presented only a recitation of the underlying criminal offense:

> The undersigned complainant [Finley] being duly sworn states: that on or about January 26, 1956, at Houston, Texas in the Southern District of Texas, Vito Giordenello did receive, conceal, etc., narcotic drugs, to-wit: heroin hydrochloride with knowledge of unlawful importation; in violation of Section 174, Title 21, United States Code.
>
> And the complainant further states that he believes that -- are material witnesses in relation to this charge.

357 U.S. at 481 (brackets *sic*).

In other words, the *Giordenello* complaint neither listed any sources, asserted that the officer had any personal knowledge of the matter, presented any facts, nor, most significantly, "set forth any other sufficient basis upon which a finding of probable cause could be made." *Id.* at 486. Here, in contrast, the complaint is not bare bones. Rather, it sets forth specific facts, to wit: (1) the exact location of the crime, *i.e.*, that it occurred at "630 Belmont, Toledo, Ohio 43607," (2) the specific fact that petitioner owned, leased, or occupied these premises, (3) the date of the offense, (4) the venue, and, finally, (5) the specific contraband in question, *i.e.*, "cocaine," rather than merely "a felony drug offense," as provided in Ohio Rev. Code Sec. 2925.13(B). Because the term "cocaine" appears nowhere in Ohio Rev. Code Sec. 2925.13, the affidavit, by definition, does not present a bare-bones recitation of the Ohio Rev. Code Sec. 2925.13's language. Consequently, the warrant does "set forth * * * sufficient basis upon which a finding of probable cause could be made"[4] and, thus, comports with the Fourth Amendment to the United States Constitution and Fed. R. Crim. P. 3 and 4.

[4]*Giordenello*, 357 U.S. at 486.

CONCLUSION

For the foregoing reasons, the writ should not issue.

Respectfully submitted,

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By: _____
Brenda J. Majdalani, Counsel of Record

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No. 00-9769

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DESARIE OVERTON,

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vs.

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On Petition For A Writ of Certiorari
To The Supreme Court of Ohio

PROOF OF SERVICE

This is to acknowledge that Jeffrey M. Gamso, attorney for petitioner, has been served with a copy of Respondent's Brief in Opposition, under Rules 29.3 and 29.5(b) of this Court, by ordinary U.S. Mail, this fourth day of June, 2001. Service was sent to Jeffrey M. Gamso, Esq., 1119 Adams, 2nd Floor, Toledo, Ohio 43624, (419) 243-3800.

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June 4, 2001

Supreme Court of the United States
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Re: *Desarie Overton v. State of Ohio*
U.S. Supreme Court No. 00-9769

Dear Clerk:

Enclosed please find the original and ten (10) copies of the State of Ohio's (Respondent) Brief in Opposition to Petitioner's Petition for Writ of Certiorari, with regard to the above-captioned case.

Would you kindly file same. Thank you.

Sincerely,

Eric A. Baum, #0052534
Assistant Prosecuting Attorney

EAB/dg
Enclosures

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